

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 5263 to 5306 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy  
of the judgement? No
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge?  
No
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SPECIAL LAND ACQUISITION OFFICER

Versus

GABRIAL SOMABHAI KHRISTI

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Appearance:

FIRST APPEALS NO. 5263 TO 5284 OF 1998

Mr. P.G.Desai, Government Pleader for appellants

Mr. Sanjay M.Amin,for the respondent

FIRST APPEALS NO. 5285 TO 5295 OF 1998

Mr. M.R.Raval,A.G.P. for appellants

Mr. Sanjay M. Amin,for respondents

FIRST APPEALS NO. 5296 TO 5306 OF 1998

Ms. B.R.Gajjar, A.G.P. for appellants

Mr.Sanjay M Amin for respondents

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CORAM : MR.JUSTICE J.M.PANCHAL and

Date of decision: 21/01/99

ORAL COMMON JUDGEMENT

(Per : Kadri, J.)

The appellants have filed this group of Appeals under section 54 of the Land Acquisition Act, 1894 (to be referred to as "the Act") read with section 96 of the Code of Civil Procedure, challenging the common judgment and award dated April 30, 1998 passed by the learned 2nd Extra Assistant Judge, Kheda at Nadiad, in Land Acquisition Reference Case No. 870/96 with Land Acquisition Reference Cases No. 852/96 to 873/96, 874/96 to 876/96, 896/96 to 898/96, 918/96 to 924/96 and 934/96 to 937/96. As these appeals arise from common judgment and award and as common questions of law and facts are involved, we propose to dispose of them by this common judgment.

2. The Executive Engineer of National Highway proposed to State Government to acquire agricultural lands of village Vansar, Taluka : Matar for the purpose of alignment of National Highway No.8, which is the project of Central Government. Pursuant to the said proposal, notification under section 4(1) of the Act was published on August 5, 1993. Subsequently notifications were also issued under section 4(1) of the Act on 6th January, 1994 and January 13, 1994 for acquiring lands of the same village. After considering the objections filed by the owners of the acquired lands, report was submitted by the Special Land Acquisition Officer to the Government under section 5-A(2) of the Act and thereafter declarations under section 6 of the Act were made for the acquisition of the lands of village Vansar. The interested persons were issued notices under section 9 of the Act for determination of compensation. The Land Acquisition Officer after considering the materials placed before him, fixed the market value of the acquired lands at the rate of Rs. 450/- per Are.

3. The claimants were of the opinion that the compensation determined by the Land Acquisition Officer was inadequate and, therefore, they filed applications under section 18 of the Act, which were referred to the District Court, Kheda and numbered as mentioned in Para-1 of this judgment. Before the Reference Court, the claimants claimed compensation of the acquired lands at Rs. 10,000/- and Rs. 20,000/- per Are. The said references came to be transferred to the Court of learned

Extra Assistant Judge, Kheda at Nadiad. All the reference cases were consolidated by the Reference Court. The claimants in support of their claim, examined Punambhai Naranbhai Patel, who was claimant of L.R. Case No. 865/96, at Exh. 12. The claimant also examined Arvindbhai S. Gupta, who was the claimant of L.R. Case No. 921/96, at Exh. 67. The claimants also produced documentary evidence in the form of sale deed dated March 30, 1990 at Exh. 68. The claimants produced 7/12 Forms of the acquired lands at Exhs. 13 to 68. The order dated July 22, 1996 passed by the Deputy Collector, Stamp Duty, Nadiad was produced at Exh. 69.

4. The Reference Court after considering the oral as well as documentary evidence adduced by the claimants came to the conclusion that though the price paid by sale deed at Exh. 68 indicated the rate of Rs. 50/- per sq. mt. in respect of non-agricultural land of the said village, the Deputy Collector, Stamp Duty had imposed fine on the vendor and vendee, as in the opinion of the Deputy Collector, Stamp Duty the value of the land was Rs. 160/- per sq. mt. The Reference Court, therefore, considered the market value of the land which was subject matter of sale deed Exh. 68 at the rate of Rs. 160/- per sq. mt. and after making deduction and addition, has awarded compensation at the rate of Rs. 72/- per Are by impugned award, giving rise to these appeals.

5. Mr. P.G. Desai, learned Government Pleader assisted by learned Assistant Government Pleaders Mr. M.R. Raval and Ms. B.R. Gajjar, has taken us through the evidence produced before the Reference Court and submitted that the Reference Court has erred in relying on the order of the Deputy Collector, Stamp Duty produced at Exh. 69 for determining the market price of the acquired lands. Learned Government Pleader further submitted that the reliance could not have been placed on the order Exh. 69, as it does not fall within any of the methods recognised by law for determining market value of the lands and, therefore, the appeals deserve to be allowed. Learned Counsel for the respondents Mr. Sanjay Amin submitted that the award of the Reference Court is just, proper and adequate and does not call for any interference by this Court and the appeals deserve to be dismissed.

6. In our view, the aforesaid finding of the learned Reference Court is patently erroneous and deserves to be set aside. The order of the Deputy Collector, Stamp Duty is for the purpose of collecting insufficient stamp duty and it cannot be relied on for determining the market

value of the acquired lands. The claimants had led no evidence to indicate as to how the Deputy Collector, Stamp Duty had arrived at the finding that the market price for the purpose of stamp duty should be fixed at Rs. 160/- per sq.mt. No evidence was led by the claimants before the Reference Court as to establish that market value of the acquired lands as concluded by the Deputy Collector, Stamp Duty was Rs. 160/- per sq.mt. The record does not indicate that the amount which was demanded by the Deputy Collector, Stamp Duty was, in fact, paid by the vendors and vendees pursuant to the order Exh.69.

7. The function of the Court in awarding compensation under the Act is to ascertain market value of the lands at the date of the notification under section 4(1) of the Act. The methods of valuation may be (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the land acquired or the land adjacent to the lands acquired and possessing similar advantages, and (iii) a number of years' purchase of the actual or immediate prospective profits of the lands acquired. In our view, the order of Deputy Collector, Stamp Duty does not fall in any of the methods recognised by the courts for determination of compensation of the acquired lands. Therefore, in our view, the Reference Court patently erred in placing reliance on the order Exh.69 passed by the Deputy Collector, Stamp Duty, Nadiad, dated July 22, 1996.

8. The lands which were subject matter of sale deed Exh.68, were admittedly non-agricultural lands of village Vansar. The price which was paid for sale of the lands by sale deed Exh.68 was Rs. 50/- per sq.mt. The vendor must have spent sizable amount for developing the lands and for converting it into non-agricultural use. In our opinion, amount of 30% shall have to be deducted for arriving at the market value of the agricultural lands. Making 30% deduction from the amount of Rs. 50/-, price of the agricultural lands in the year 1990, which is the year of the sale deed Exh.68, would come to Rs.35/- per sq.mt. The notifications in the present case under section 4(1) of the Act were issued in the month of August, 1993 and in the month of January, 1994. Therefore, there was nearly gap of almost 4 years between execution of the sale deed Exh.68 and the issuance of notifications under section 4(1) of the Act.

9. The acquired lands were abutting Mumbai Ahmedabad National Highway No.8. The claimants' witness also

deposed about the situation of the acquired lands. From the oral testimony of the claimants' witness, it becomes evident that various agricultural lands were acquired in the surrounding villages and, therefore, the pressure on the agricultural lands surrounding village Vansar had increased. There is fast development in the lands of Kheda District because of growing of industrial and commercial activities in many parts of the District. There was pressure on the lands because of acquisition of the lands of District Kheda for various activities, namely, construction of roads and other commercial activities. Under the circumstances, we think that we should take into account reasonable rise in price, particularly keeping in view the gap of almost four years between issuance of notifications under section 4(1) of the Act and execution of sale deed Exh.68. Bearing in mind the above salient features, we adopt the rise in price at 15% per year. The price of agricultural lands of village Vansar in the year 1990 was Rs. 35/- per sq.mt. If we take the rise in price of acquired lands at 15% per year and considering the gap of almost four years between the issuance of notifications under section 4(1) of the Act, the market price of the acquired agricultural lands of village Vansar, which are subject matter of the present appeals, would come to Rs. 60/- per sq.mt. Therefore, we determine the market price of the acquired agricultural lands which are subject matter of present appeals at Rs. 60/- per sq.mt. The determination of market price by the Reference Court at Rs. 72/- per sq.mt. deserves to be set aside and modified by determining it at Rs. 60/- per sq.mt. The award of the Reference Court with regard to extending of statutory benefits under sections 23(1-A), 23(2) and 28 of the Act, deserve no modification and the statutory benefits extended in favour of the claimants by the Reference Court deserve to be confirmed.

As a result of the foregoing discussion, all the appeals are partly allowed. The market price of the acquired lands at Rs.72/- per sq.mt. determined by the Reference Court is modified and the market price of the acquired lands is determined at Rs.60/- per sq.mt. Rest of the award of the Reference Court is confirmed. The appeals are partly allowed, with no order as to costs. Office is directed to draw the decree in terms of this judgment.

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(patel)